



SNAP BRIDGE CONSULTANCY

Frequently Asked Questions-Private Mediation Agreements

1. What is Private Mediation?

Private Mediation is a form of alternative dispute resolution mechanism where parties to a dispute that is not the subject of a pending court case voluntarily appoint a mutually agreeable qualified mediator to assist them as they attempt to settle the issues in dispute .

2. What is a Private Mediation Settlement Agreement?

A settlement agreement arising out of a mediation process carried out by a qualified mediator in respect of a dispute that is not the subject of a pending court case.

3. How does Private Mediation differ from Court Annexed Mediation?

No.	Private Mediation	Court Annexed Mediation
1	Does not arise from a pending court case	Arises from a pending court case
2	Carried on by a qualified mediator	Carried on only by a MAC accredited mediator with an active status
3	Must resolve ALL the issues in dispute.	May resolve issues partially
4	Initiated by either party in dispute asking the other for concurrence to refer the dispute to mediation, pursuant to a prior mediation agreement or pursuant to an agreement to mediate arrived at after the dispute has arisen	Initiated through pleadings filed in court
5	Mediators paid by parties on hourly basis or a lumpsum depending on nature of the dispute	Mediators paid a fixed amount per file by the court
6	The process is voluntary	Commencement mandated by court but the mediation process retains the attributes of mediation
7	Parties mutually choose the mediator	Mediators Appointed by the court or by the parties from the list of accredited mediators, by mutual consent

8	Parties mutually agree on the venue	Judiciary may facilitate the mediation session but parties are free to agree with the mediator on alternative venues
9	Parties mutually agree on the timelines	Mediation process takes 60 Days

4. Why consider Private Mediation?

- ✓ Cost effective and saves time.
- ✓ Flexibility: procedures modified to fit demands of the parties.
- ✓ Preserves relations between parties
- ✓ Confidential process
- ✓ Avoids further buildup of case backlog
- ✓ Avoid issues of non-compliance
- ✓ Parties maintain their autonomy on all aspects of the mediation

5. Who is a qualified mediator?

A person who:

- a) Possess full accreditation status by the committee whether active or not
- b) Be Accredited by any other institution recognized by the committee, or
- c) Possess such other qualification as may be approved by the committee

An accredited mediator is a person whose name is enlisted on the register of accredited mediators maintained by the Mediation Accreditation Committee.

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6. For which Disputes is Private Mediation Appropriate?

- Any dispute capable of being resolved through mediation under Kenyan law or international law and includes , employment and labour disputes, environment and land disputes, custody & maintenance disputes , succession and matrimonial disputes , civil and commercial cases.

7. Which disputes are not appropriate for Private mediation?

- ✓ Disputes relating to child neglect, sexual offence cases, SGBV cases, terrorism cases, criminal cases
- ✓ Disputes involving pure points of law
- ✓ Cases involving public interest issues

8. What is the role of a mediator in private mediation?

- ✓ To guide parties on the mediation process
- ✓ To facilitate resolution of the dispute.

- ✓ To maintain confidentiality.
- ✓ To draft private settlement agreements upon conclusion, where parties so request or are not able to draft it themselves or through their representatives
- ✓ To file an affidavit annexing/attaching the private mediation settlement agreement where there is need to register the settlement agreement in court for enforcement

9. Requirements for a Private Mediation Agreement to be registered by Court?

- ✓ Reached through assistance of a qualified mediator
- ✓ Must not relate to a dispute pending in court
- ✓ Must relate to a dispute capable of being resolved through mediation under Kenyan or international law
- ✓ Not be illegal
- ✓ Capable of enforcement by court under the law
- ✓ Must be reduced into writing in the language of the court
- ✓ Must be dated, signed by the mediator, parties and their advocates/representatives where present
- ✓ Must indicate where the mediation took place and where the agreement was signed
- ✓ Must have resolved ALL the issues in dispute
- ✓ Must indicate clearly the nature of the dispute, issues involved and the settlement agreement arrived at.

10. What is the Procedure for Presentation for Registration?

- ✓ The mediator within 30 days of execution of the private settlement agreement uploads the agreement through the E-filing system for registration.
- ✓ The Private mediation settlement agreement is filed as an annexure /attachment to an affidavit (form 15 CAM Rules, 2022) duly sworn by the mediator.

11. How are Private Mediation Agreements Registered?

- Upon filing of the private mediation settlement agreement, the officer at the registry shall verify and assess the documents for purposes of payment of fees as prescribed.
- Agreement is serialized and entered in the register of Private Settlement Agreements.

12. What happens after a Private Mediation Agreement is registered?

- After registration the Agreement is recognized and forms part of the court record.
- After registration, parties are at liberty to apply for enforcement by execution or otherwise.

13. Procedure for Enforcement of Private Mediation Agreements?

- Party seeking to execute a private mediation agreement files a Notice of Motion Application for Enforcement of Private Mediation Agreement (Form 16 CAM Rules, 2022)
- Upon receipt of application, registry opens a separate mediation file for the private agreement
- File placed before the court for adoption within 14 days.
- Court may order the other party be served or examined on oath before adopting the agreement.
- Where satisfied, the court adopts the agreement as a judgment of the court and issue an order /decree in the terms of the agreement.
- Aggrieved parties may, with leave of court apply to set aside the adoption proceedings or resultant orders
- Parties may within 14 days appeal against the order of the court made in an application to set aside a private mediation agreement.
- No appeal shall lie against a private mediation agreement itself or its contents.

14. Can an appeal be made against a judgement or an order arising from a mediation agreement?

No. There can be no appeal from private mediation settlement agreements in themselves or their contents as they are based on the mutual agreements arrived at by parties.

15. Can mediation proceedings from Private Mediation be used as evidence in court?

No. Information exchanged or made during mediation is confidential. It is not admissible as evidence in any current or future cases in any court.

16. In what circumstances can information given during Private Mediation proceedings be disclosed?

Information relating to or arising out of mediation is confidential unless disclosure is compelled by law or the information relates to child abuse, child neglect, defilement, domestic violence or related criminal or illegal purposes.

Get in touch for any other inquiry;

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